APPENDIX

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED JULY 15, 1982

NOT FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee	No. 91-1198
vs.	D.C. No. CR
ABE ROBERT HONIGMAN, aka ROBERT DAVIS AUSTIN, Defendant-Appellant	80-1099 DVK
	MEMORANDUM

Appeal from the United States District Court for the Central District of California

The Honorable David V. Kenyon, District Judge, Presiding

Argued and Submitted May 6, 1982

Before: ANDERSON, SKOPIL and CANBY, Circuit Judges

Appellant was convicted on all fourteen counts of the indictment for interstate transporation of forged securities, 18 U.S.C. section 2314.

EVIDENCE

In this appeal, appellant argues the admission of prior "bad act" evidence, in violation of F.R. 404(b), was prejudicial error. The court properly undertook the balancing discussed in Rule 403 of the probative value of the evidence with its prejudicial impact. U.S. v. Sangrey, 586 f.2d 1312, 1315 (9th Cir. 1978). Charged with this offense, one element of which is intent or knowledge to defraud, the prosecutorial introduction of the Ramirez checks was proper. U.S. v. Walls, 577 F.2d 690, 696-7 (9th Cir. 1977), cert. denied, 439 U.S. 893, 58 L.Ed.2d 239 (1978). The court, in ruling they could be introduced under Rule 404(b), did not abuse its discretion.

Appellant also complains of the introduction of eight checks not charged in the indictment, and checks he drew on his own personal account that were returned marked "not sufficient funds." It is within the court's discretion to

accept ths evidence as proof of knowledge, plan, or absence of mistake or accident following the weighing process described above. In addition, the court did give an instruction appropriately limiting the jury's use of this evidence.

TRIAL PROCEEDINGS

The allegation of prosecutorial misconduct is similarly without merit. There was no objection at the time of the closing argument. However, even if an objection had been voiced, in light of the circumstances of this case, we cannot conclude the error was excessive to the point of denying appellant a fair trial.

Cooper v. Fitzharris, 586 F.2d 1325 (en banc) (9th Cir. 1978), cert. denied, 440 U.S. 974, 59 L.Ed.2d 793 (1979), is the law in the area of ineffective assistance of counsel. Though appellant's trial counsel admitted eror in failing to object to hearsay testimony, this is insufficient; relief will be granted "only if it appears <defendant> was prejudiced by counsel's conduct." Id. 586 F.2d at 1331. In light of the overwhelming evidence of appellant's guilt, the errors made were

not prejudicial.

SUFFICIENCY OF EVIDENCE

Appellant argues lastly there was not substantial evidence to support his conviction since it was necessary to prove he lacked authority to sign his mother's checks. It is true that the evidence of guilt here is circumstantial. However, that fact alone is not determinative since we have many times rejected the distinction between the weight given direct as compared with circumstantial evidence. The jury is merely to "weigh all of the evidence, direct and circumstantial, against the standard of reasonable doubt." U.S. v. Nelson, 419 F.2d 1237, 1241 (9th Cir. 1969); U.S. v. Federico, 6548 F.2d 1337, 1343 (9th Cir. 1981). Circumstantial evidence can be used to prove any fact and is sufficient to sustain a conviction. U.S. v. Ramirez-Rodriguez, 552 F.2d 883, 884 (9th Cir. 1977); U.S. v. Nelson, 419 F.2d at 1241.

We find the other arguments of appellant lack merit. Accordingly, the conviction is

AFFIRMED.